

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

AL CHRISTOPHER BRAXTON ALLEN,

Defendant.

3:16-cr-00062-RCJ-VPC

AMENDED ORDER

Defendant has filed a notice indicating that he desires to appear unshackled at upcoming hearings. Defendant bases his notice on the majority opinion of an abbreviated en banc of the Ninth Circuit Court of Appeals, which recently opined in *dictum* 6–5 that a criminal defendant has a Fifth Amendment right to appear in court unshackled unless an individualized examination indicates that physical restraints are the least restrictive means of furthering a compelling government interest, i.e., courtroom security. *See United States v. Sanchez-Gomez*, 2017 WL 2346995, at *13 (9th Cir. May 31, 2017) (en banc) (denying a petition for a writ of *habeas corpus*). The Government has moved to strike the notice. The Court will strike the notice. The Federal Rules of Criminal Procedure make no provision for “notices” like the one Defendant filed.

Even if the Court were to construe the notice as a motion, the only essential part of the *Sanchez-Gomez* opinion is found in its last paragraph, wherein the court denied the petitioners' request for a writ of mandamus. *See id.* at *13. The denial of a petition for a writ of mandamus ordinarily does not even become law of the case, *see Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1078–79 (9th Cir. 1988), much less binding precedent in unrelated actions. Finally, the mandate in *Sanchez-Gomez* has been stayed until August 29, 2017, four weeks after the upcoming sentencing hearing.

CONCLUSION

IT IS HEREBY ORDERED that the Motion to Strike (ECF No. 28) is GRANTED, and the Notice (ECF No. 27) is STRICKEN.

IT IS SO ORDERED.

Dated this 20th day of June, 2017.

ROBERT C. JONES
United States District Judge